IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 17 OF 2003

Mr. Nitin Shridhar Parab,
having their common address
at 3/141/MHB, Kher Nagar,
Bandra (East), Mumbai 400 051. ... Petitioners

Versus

1. M/s. Godrej & Boyce Mfg. Co.
Ltd. a Public Limited Company
incorporated Under the Companies
Act, 1956, having its registered
office and factory at Phirozsha
Nagar, Vikhroli, Mumbai 400 079.

2. Mr. M.L. Harpale,
Member, Indsutrail Court,
Mumbai having his office
at Administrative Building,
Kher Nagar, Bandra (East),
Mumbai 400 051. ... Respondents

WITH
WRIT PETITION NO. 26 OF 2003

1. Avdhut Gangaram Dhuri,
2. Santosh Laxman Naik,
3. Bapu Jayaram Kale,
having their common address
at 3/141/MHB, Kher Nagar,
Bandra (East), Mumbai 400 051. .. Petitioners

Versus

1. Messrs. Godrej Ge-Appliances
Limited, a Public Limited
Company incorporated Under
the Companies Act, 1956,
having its registered office
and factory at Phirozsha Nagar,
Vikhroli, Mumbai 400 079.

2. Mr. M.L. Harpale,
Member, Indsutrial Court,
Mumbai having his office at
Administrative Building, Kher
Nagar, Bandra (East),
Mumbai 400 051.

Mr. C.J. Sawant, Senior Counsel with Mr. P.M.
Palshikar for Petitioner.

Mr. J.P. Cama with Ms. Mosam Mody i/by Haresh
Mehta & Co. for Respondents.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 20, 2004

ORAL JUDGMENT:

1. Both the petitions are directed against the order dated 26.7.2002 which is a common order in both the complaints filed by workmen complaining of unfair labour practices under Item No. 6 of the Schedule II of Item No. 9 and 10 of Schedule IV of M.R.T.U. & P.U.L.P. Act, 1971.

2. In Writ Petition No. 17 of 2003, the complainant workmen have filed petition against the employer M/s. Godrej Boyce & Mafg. Co.Ltd. Similarly Writ Petition No. 26 of 2003, is by another set of workmen in respect of their employment by M/s. Godrej Ge Appliances Ltd. The employer in the second petition can be described as sister company of Respondent No. 1 in Writ Petition No. 17 of 2003.

3. A few facts may be set out for the purpose of understanding the controversy which is in issue. Respondent No. 1 in both the petitions apart from their regular employees used to also employ temporary employees and give them employment for specified periods. We are concerned with the employment offers which were to be effective from 1.11.2000. An issue arose on a purported act of respondent's No. 1 in both the petitions offering to the complainant workmen wages which were lesser than which they were drawing during the term of

their last temporary employment with the Management. The main challenge by the petitioner workmen in both the petitions are (1) that the respondent management in reducing the wages of the workman and not allowing them to work are guilty of locking out the workman. That lockout is illegal and therefore, consequential directions are prayed for in the complaint. (2) It is secondly contended that the reduction of wages amounts to an illegal change in the conditions of service. The Management has failed to comply with the statutory requirements of Section 9A of the Industrial Disputes Act, 1947 and that amounts to an act of unfair Labour Practice Act and consequently the complaints ought to be allowed.

4. The Industrial Court by the impugned order held firstly that the complaint as filed by the workman was of collective nature and in view of Section 36(1) of the Industrial Disputes Act, were not maintainable. The learned Industrial Court thereafter proceeded to hold that the complainant workmen have come up with a case that their terms and conditions with regard to wages and did not come to this court with a case that their wages came to be prejudiced from 1.11.2000. No notice was service under section 9A of the Industrial Disputes Act and consequently the reduction in wages is bad in law but had not come with the case that the said reduction is not justified. In so

far as the requirement of notice under Section 9A is concerned, recorded a finding that the workman were appointed as temporary employees on revised pay scales which the employees had refused to accept and it is not the case where during the period of temporary appointment of the temporary employees the respondents have changed the conditions of service and on that count rejected the said contention. In so far as being locked out the learned Industrial Court has recorded a finding on consideration of the evidence led before it that the workman on the day of joining were explained the calculations of wages for temporary employees. The workman had refused to accept the said conditions and therefore, it cannot be inferred that the respondents have declared lock out in respect of the temporary employees or that the lock out was illegal. In view of these findings, dismissed the complaint.

5. At the hearing of this petition, on behalf of the petitioners, their learned counsel has assailed the said findings of the Industrial Court. It is firstly submitted that the order of the Industrial Court suffers from an error apparent on the face of record in as much as the finding of the Industrial Court that the complaints had no locus standi to maintain the complaint. Placing reliance on the judgement in the case of Rama Bala Kate and Ors Vs. Walchandnagar Industries Ltd. & Ors. 1996(1) ILLJ

713, in the judgment of Tata Hydro Electric Power Supply Co. Ltd. & ors. Vs. Narendra L. Mansukhani & Ors. 1999 1 CLR 741 and in the Judgment of Yashvant Jagannath Ingawale & Ors. Vs. Snowcem India Ltd. & Ors. 2000 1 CLR 116, it is pointed out that if the ratio of the said judgments are considered looking at the nature of the complaints and the acts of unfair labour Practice which have been invoked, the complaints filed by the workmen was maintainable. It is next submitted that in the instant case, record would show that the workman joined duties on 1.11.1990. At that time they were not informed that there was reduction in their wages and it is only subsequently after they had joined duties that they were given purported letters of appointment to indicate that their salaries would be less than what they were earlier getting. The workman therefore, rightly rejected the said offer. The Respondents thereafter have prevented the workmen from discharging their duties and in these circumstances, it can be said that the workmen were locked out. The learned Industrial Court in holding otherwise has committed an error of law and consequently also the order is liable to be set aside. Thirdly it is submitted that once the workmen were employed, they would be entitled to same wages as they were being paid during the last employment and or the workmen who are in the regular services of the company. Their wages could

not have been reduced without complying with the requirements of Section 9A of the Industrial Disputes Act. If there is no compliance with the said provisions, it would be violative of section 9A of the Industrial Disputes Act. Reliance is placed on the judgment of M/s. Tata Iron and Steel Co. Ltd. Vs. The Workmen and others 1972 II LLJ 259. For all the aforesaid reasons, it is submitted that the petition should be allowed.

. On the other hand on behalf of the respondents, their learned counsel firstly addressing the issue of merits points out that in the instant case, there is settlement entered into with the recognised union by the respondent companies. Under the terms of the said settlement in respect of the regular employees in service the time scale is different from those who will be appointed after the settlement. It is pointed out that the respondent No. 1 in writ petition No. 26 of 2004 before 1.11.2000 had engaged regular employees and on the new pay scales as contained in the settlement with the recognised union. Once that be the case the temporary employees who were to be employed after 1.11.1990 can not be given a higher pay scale than the employees appointed on probation. All that the management had done is to pay wages in terms of settlement with the recognised union. It is pointed out that those who are regularly employed cannot be paid less than

those appointed on temporary basis. It is further pointed out that there is finding of fact recorded that all the persons at the time of employment on 1.11.1990 were made aware of the new wages and therefore, it cannot be said that the respondent management were offering lessor wages to the complainant workmen and or reducing the wages which they were entitled to. The learned Tribunal has also recorded a finding that this is not a case of locking out. Once that be the finding this court would not interfere with the said finding under exercise of its extra ordinary jurisdiction being purely a finding of fact. My attention is invited to the evidence on record of the workmen themselves to show that they knew what their wages would be on 1.11.1990 itself, when they were offered employment. In so far as notice of change is concerned, it is pointed out that that would only be required in a case where conditions of service are altered during the course of employment. This was not so in the instant case and as such Section 9A of the Industrial Disputes Act was not attracted and consequently also the findings of the Industrial Court cannot be faulted with. Referring to the judgments relied upon, the learned counsel points out that they are not attracted. The Tribunal it is contended was right on the facts of the case to hold that the complaints were not maintainable.

6. It is not necessary to go into the issue as to whether findings of the Industrial Court that the complainants had no jurisdiction to maintain the complaint as in my opinion it really does not required tobe answered, on the facts of the present case and considering the invocation of the various items in schedule of the workmen union.

. The real controversy which has to be decided is whether the petitioners were locked out as contended on behalf of the petitioners. Firstly there is finding of fact recorded in favour of the respondent Management. Prayer Clause (c) as prayed in the complaint was to allow the complainants and all the temporary employees who names are mentioned in Annexure A and B to the complaint to resume work on the same terms and conditions to which they were entitled to prior to 24.10.2000 and to pay them wages from 3.11.2000 till they were allowed to resume work. In other words, from Prayer Clause (c) what emerges is that the workman should be paid wages which was payable on 20.10.2000. On 21.10.2000 admittedly they were not in employment. Consequently prayer Clauses to pay them wages from 3.11.2000 till they allowed to resume the work at the rate of wages on 20.11.2000 can not be granted. It has come on record that the workmen earlier used to be appointed on temporary basis and for specific periods. The relief as prayed for is not also for the purpose of regularisation the complainant

workmen. We have noted earlier that on 1.11.1999 a settlement was signed between the recognised union and the Management and that on 30.10.2000 respondent management in Writ Petition No. 26 of 2003 had appointed probationers. In the reply filed on behalf of the Management in Complaint (ULP) No. 2 of 2001, it was pointed out that on 8.11.2000 services of the temporary workmen including the complainants had been terminated as the company did not get necessary orders as anticipated and consequent termination. It is also pointed out that the notices had been sent out on 27.12.2000 and the complainants and other temporary workmen who were appointed on 1.11.2000 and who thereafter had not reported for work were issued communication by respondent company giving them offer of appointment. In the evidence of Nitin Parab, it has come on record that all temporary workmen were given brake on 22.10.2000. 75 temporary workmen were offered to work on 1.11.2000 and allowed to report on duty on 1.11.2000. They were called to the conference room of the Plant Manager. The Plant Manager and the Labour Officer Miss Rego were there. They explained to them the calculation about the new wages for temporary employees. In terms of the said calculations, there would have been reduction by Rs.2300/- per worker per month. After 1.11.2000 they were asked to receive a appointment letter on 3.11.2000 but they refused to accept the same as they had not

given consent for reduction of wages. In the cross examination, Parab admits that they had received a letter of December, 2000 and they were asked to contact the officer for their appointment on temporary basis on the same terms and conditions offered on 1.11.2000. From the evidence of the complainant's witness itself, the issue would arise as to whether it can be said that the respondent company has locked out the petitioners. From the evidence on record it will be clear that it is the petitioners who refused to work on account of reduction in the wages. It is therefore, not a case where the respondent Managements have refused to employ the petitioners. On the contrary the other evidence on record is that even in November-December, 2000 the complainant workmen were offered employment but on the same terms and conditions as contained in the letter of 1.11.2000. Once that be the case and for the material on record it is clear that it is the petitioner workmen who refused to work on account of the reduction of wages, it can not be said that the workmen were locked out. The settlement itself provided for a new wage structure between workmen in service and those employed after the settlement. In my opinion the findings of fact recorded by the Industrial Court on that count cannot be faulted with.

7. That leaves only the issue of notice under

Section 9A of the Industrial Disputes Act. Once again the findings of fact cannot be faulted with. In the instant case, letters of appointment of 1.11.1990 itself indicated that the petitioner workmen were to be employed on new wages. They were being firstly appointed for a new period. It is not a case of alteration of conditions of service in the course of employment as rightly held by the Industrial Court. Once that be the case, there was no question of Section 9A being attracted.

8. Considering the above, no case made out for interference with the impugned order in the exercise of the extra ordinary jurisdiction of this court. Rule discharged. No order as to costs.

(F.I. REBELLO,J.)